

Community Dispute Resolution Program

Innovative Mediation Services in Michigan Trial Courts

September 2003

District Court

Small claims

Courthouse mediation

On site mediation typically occurs on the date of the scheduled small claims hearing. A bailiff, after identifying that all parties to a matter are present, offers the option of mediating a matter prior to having a hearing. Volunteer mediators conduct mediation in conference and jury rooms. Consent judgments or voluntary dismissals are entered for matters in which agreements are reached. Cases not resulting in agreement continue to hearing.

Benefits include parties having reached their own resolution of the matter without requiring a judicial determination and reduced hearings held before a judge. Surveys indicate that parties keep their agreements in a high percentage of cases, and user satisfaction rates run very high. This may result in lower levels of post-judgment collection activities; however this remains to be formally evaluated.

Off site mediation

Much the same applies as the courthouse practice, except that CDRP centers receive notice from courts and contact parties prior to the scheduled hearing date. Either by mail or telephone contact, center staff invite parties to attend mediation at the center or other neutral location. Mediators help parties complete either consent judgments or voluntary dismissals upon resolution. Matters not resulting in agreements proceed to hearing.

Off site mediation generally affords parties more flexibility in scheduling a meeting time, reduces stress often accompanied with court, and permits more time to pursue resolution options.

General civil

With the growing expertise of mediators, some courts now refer general jurisdiction cases. Many attorneys who have completed MCR 2.411 mediation training are using CDRP centers to build their mediation skills, thus it is increasingly likely that an attorney may be assigned to more complex district court general civil matters.

Summary landlord/tenant proceedings

Through mediation, landlords and tenants resolve either payment issues or determine a mutually acceptable date of moving out of the rented facility. In some cases, third parties that provide emergency assistance have provided tenants with funds to either remain in their rented space, or to transition elsewhere.

Probate Court

Guardianship

The existence of “on-going relationships” is one of the fundamental indicators that a matter should be considered for mediation. Contested guardianship matters generally involve family members and close friends, and typically the contest has more to do with something that happened years ago than with the immediate need of a guardian. In mediation, parties are able to talk through long-standing problems to provide a new focus on the immediate needs of the petitioned family member.

A key element to successfully convene a mediation session is to schedule the mediation from the bench to ensure that all persons attend.

Wills & trusts

Akin to guardianship matters, wills and trusts disputes, commonly involving family members, are amenable for resolution through mediation. Controversies frequently stem from prior unresolved problems. In mediation, parties have an opportunity to work through issues and to find solutions everyone can accept.

Circuit Court

General Civil

Pro se & indigent litigants

The free or low cost services offered through CDRP centers respond to “access to justice” considerations in offering all litigants, including pro se and indigent litigants, access to dispute resolution processes.

Cases evaluated under \$25,000

Not yet piloted but under consideration, this initiative would focus on mediating cases that are case-evaluated under \$25,000.

Family Division

Pre- and post-judgment domestic relations

Many centers have handled property division matters involving unwed partners or partners with limited assets. Some centers offer mediation to help couples reach mutually acceptable parenting plans. Post-judgment, centers mediate parenting time modification issues at the request of the FOC.

Personal Protection Order

The mediation of PPO matters typically involves instances where the court has denied a PPO for failing to meet statutory thresholds, but where there is nevertheless a conflict between parties. Less frequently, but when mediation may resolve an underlying dispute, a PPO will contain a provision that permits parties to meet at a mediation center or at the court for the limited purpose of mediation.

Incorrigibility

Courts have directed parents and children to mediation where communications between parents and children can be re-established sufficient to reach agreements resolving the petitioned matters.

Victim/offender

Juvenile offenders meet with victims in a hybrid mediation process which permits the victim to share with the offender any feelings about the criminal act. "Victim-offender mediation" is frequently cited as a means to humanize the judicial response to a criminal act by having the offender meet with the juvenile to discuss the incident and to participate in restitution and community service discussions. Mediation may be offered either as a part of diversion or post-adjudication. In some counties, mediation of juvenile offender matters is a part of a local FIA-coordinated Balanced and Restorative Justice initiative. Mediation will soon be tested in adult offender cases, for example in embezzlement cases, to determine the level of restitution and repayment period.

Permanency Planning Mediation Program

About one third of the CDRP centers mediate child protection cases. These cases are referred by the court to mediation at a wide variety of points in the process, including pre-adjudication, adjudication, disposition, review hearings, permanency planning hearings, termination, and adoption. An overarching goal of this type of mediation is to help children achieve permanent placements in a timely and safe manner. These mediations generally include parents and their attorneys, the lawyer guardian ad litem for the children, FIA and private agency case workers; they also sometimes include the prosecutor, foster parents, other relatives, service providers, court appointed special advocates and even the children if the situation is appropriate. In over 80% of these cases an agreement is reached, which is then brought back to court for judicial approval.

Public policy mediation

Public policy issues have been referred to the Community Dispute Resolution Program (CDRP) by courts and through pilot projects developed by the Dispute Resolution Association of Michigan (DRAM). The projects are an outgrowth of DRAM's Public Policy Dispute Resolution Program. Organizations that participate in the program seek to improve government productivity by reducing conflict and enabling parties to develop their own solutions.

A public policy dispute has been defined for the purposes of this program as a dispute that comes before a government body or otherwise before the public, typically through the media. The DRAM program trained approximately 40 mediators in public policy facilitation techniques. It then developed referral procedures for local government associations and state agencies in order to put the training into practice.

Referrals thus far have involved disputes or facilitated discussions between local government units, local government and citizens, neighborhood councils and residents, or government agencies and service contractors. One case, for example, involved a disagreement between a township and a municipality over responsibility for water line repairs. A second involved a conversation between village officials and citizens over the future of the village charter. The program will continue into 2004.

Office of Dispute Resolution Website: <http://courts.michigan.gov/scao/dispute/odr.htm>